



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,232	09/24/2001	Gregor John McLennan Anderson	PG3654USW	6565

23347 7590 11/17/2006

GLAXOSMITHKLINE
CORPORATE INTELLECTUAL PROPERTY, MAI B475
FIVE MOORE DR., PO BOX 13398
RESEARCH TRIANGLE PARK, NC 27709-3398

EXAMINER

CARTAGENA, MELVIN A

ART UNIT	PAPER NUMBER
----------	--------------

3754

DATE MAILED: 11/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/937,232	ANDERSON ET AL.	
	Examiner	Art Unit	
	Melvin A. Cartagena	3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 and 35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 and 35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-30 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,318,603 to Burt in view of US 5,772,086 to Bryant et al.

Burt shows an aerosol valve as seen in Fig. 1 having a metering chamber 4, a sampling chamber 5, a first sealing ring 9 made of an elastomeric material, a valve stem 7 with a dispensing passage 10, a second sealing ring 12 made of an elastomeric material provided between the metering chamber and the sampling chamber, a transfer passage 15.

In reference to claims 3-6 and 15-18:

“[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted) (Claim was directed to a novolac color developer.

In reference to claims 7, 8, 19 and 20:

The first and second sealing rings are fixedly stationary relative to the valve by the ferrule 2 and the sleeve 14.

Art Unit: 3754

Burt lacks the sealing rings having an area of contact with the valve stem that is less than 90% the area of contact of a non-rounded sealing ring and Burk is silent about the material used to make the sealing rings. Bryant shows an aerosol valve as seen in Figs. 13 and 19 having sealing rings seen in Figs. 2a-2g having an area of contact with the valve stem that is less than 90% the area of contact of a non-rounded sealing ring, 2d in particular shows a sealing ring with lobes 212 and wells 213, in addition the sealing rings are made out of the same materials claimed in claims 27 and 35, see column 7, lines 18-38. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to make the sealing rings of Burt with cross sectional shapes that reduce friction between the stem and the sealing rings as taught by Burt to facilitate deformation and reduce the force required to operate the valve while maintaining a gas-tight seal, see column 4, lines 44-68.

Response to Arguments

3. Applicant's arguments filed September 18, 2006 have been fully considered but they are not persuasive. Bryant discloses multiple embodiments where the sealing elements are fixed to the valve body, as seen in Figs. 5, 8 and 9, and where the seals are fixed to the valve stem and movable relative to the valve housing, as seen in Figs. 1, 4 and 7. The Bryant reference shows how modifying the cross section of the seal, whether around the valve stem or around the metering chamber, see column 4, lines 46-47, can reduce the frictional forces required to actuate the valve while maintaining a proper seal, see column 4, lines 44-50. The motivation to combine the references of Burt and Bryant is to produce proper seal while reducing frictional forces and comes from the specifications of Bryant not from the applicant's disclosure.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin A. Cartagena whose telephone number is (571) 272-4924. The examiner can normally be reached on T-F (7:30AM to 6:00 PM).

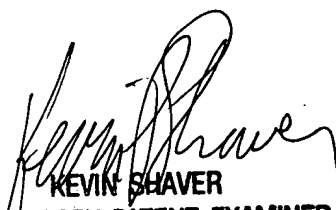
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3754

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MAC 4/9/06

MAC


KEVIN SHAVER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700